

## **DEP MODEL WATER USE RESTRICTION BY-LAW/ORDINANCE**

This is a model provided by the Department of Environmental Protection for use by municipalities in developing their own by-laws to regulate the use of water supplied by a municipal water system. It is for communities wishing to establish enforceable limitations on the use of water during temporary periods of high water demand by controlling outdoor watering, swimming pool filling and/or non-commercial car washing. If properly enacted, the municipal by-law will enable municipal water systems to control and mitigate periods of high demand - with an associated stressed water supply - typically occurring during the summer months. The restrictions included in the by-law include odd/even day outdoor watering, hand held hose watering only, limited outdoor watering hours, outdoor watering bans, and prohibitions on filling swimming pools and the use of automatic sprinkler systems. Persons violating the by-law's restrictions are subject to civil fines. The Department believes it is important for municipalities to consider exemption procedures for the restrictions included within their by-law. These, or other exemptions may be appropriate due to the economic or public health impact of water use restrictions on specific industry sectors when such restrictions may result in crop or animal loss or when they would prevent use of indoor or outdoor pools at medical or rehabilitation facilities. Municipalities should give careful consideration to the type of uses granted exemptions and should consider conditioning those exemptions to ensure that those granted exemptions are operating in a water efficient manner.

If a municipality is experiencing complex system problems affecting its ability to consistently provide an adequate supply of water, implementing the model by-law may not address the problem. In that case, a declaration of water supply emergency under M.G.L. c.21G, §15-17 should be requested from the Department. After implementation of any state of water supply conservation, the Department by regulation (310 CMR 22.15(8)(a) must be notified in writing within 14 days of the implementation of restrictions.

Local requirements for adopting by-laws may vary according to the terms of individual municipal charters. Consultation with town counsel is strongly advised before adopting any by-law. The Department makes no representation concerning the legal effect or validity of this model.

**CONSULT WITH YOUR TOWN COUNSEL TO INSURE ADOPTION OF AN APPROPRIATE, ENFORCEABLE AND LEGALLY VALID BY-LAW THAT WILL MEET YOUR MUNICIPAL NEEDS.**

### **Section 1 Authority**

This By-law is adopted by the Town under its police powers pursuant to the Home Rule Amendment of the Massachusetts Constitution, Article LXXXIX, to protect public health and welfare and its powers pursuant to M.G.L. c.40, §§21 et seq. and implements the Town's authority to regulate water use pursuant to M.G.L. c. 41, §69B. This by-law also

implements the Town's authority under M.G.L. c. 40, §41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection.

## **Section 2 Purpose**

The purpose of this by-law is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the Department of Environmental Protection.

## **Section 3 Definitions**

Agriculture shall mean farming in all its branches and agriculture, as defined at M.G.L. c. 128, § 1A.

Outdoor watering shall mean any residential, municipal, industrial, or commercial watering of decorative lawns, trees or shrubbery.

Person shall mean any individual, corporation trust, partnership, association, agency or authority, or other entity and any officer, employee, group or agent of such persons.

State of Water Supply Emergency shall mean a State of Water Supply Emergency declared by the Department of Environmental Protection under M.G.L. c.21G, §15-17.

State of Water Supply Conservation shall mean a State of Water Supply Conservation declared by the Town pursuant to section 4 of this by-law.

Water Users or Water Consumers shall mean all persons using water from the Town's public water source irrespective of that person's responsibility for billing purposes for use of the water.

## **Section 4 Declaration of a State of Water Supply Conservation**

The Town, through its Board of Water Commissioners or selectmen authorized to act as such, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Board that a shortage of water exists of such a degree that conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Conservation shall be given under section 6 of this by-law before it may be enforced.

## **Section 5 Restricted Water Uses**

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary

to protect the water supply except as provided in Section 11. The applicable restrictions, conditions or requirements shall be included in the public notice required under section 6.

- a) Odd/Even Day Outdoor Watering: Outdoor watering on property having an odd numbered address is restricted to odd numbered days. Outdoor watering on property having an even numbered address is restricted to even numbered days. *(Odd/even day watering and off peak watering generally does not reduce overall water demand (and may actually increase overall demand), but can reduce peak demands. Such a restriction is only useful when the system generally has sufficient water quantity, but has system limitations in meeting peak demands).*

or

Off-Peak Outdoor Watering: Outdoor watering is limited to between \*\*\* hours on \*\*\* days (specify particular hours and days). *(In general, restricting outdoor water use to between sunset and early morning is best for turf needs and coincides with off peak hours for many water supply systems. Systems may choose to restrict water use to one or two days per week during specified hours.)*

- b) Outdoor Watering Method Restriction: Outdoor watering is restricted to bucket, can or hand held hose watering with automatic shutoff nozzle.
- c) Outdoor Watering Ban: Outdoor watering is prohibited.
- d) Outdoor Watering Hours: Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.
- e) Swimming Pools: Filling and topping off of swimming pools is prohibited.
- f) Automatic Sprinkler Use: The use of automatic sprinkler systems is prohibited.
- g) Car washing: Car or vehicle washing is prohibited.

## **Section 6 Public Notification of a State of Water Supply Conservation and State of Water Supply Emergency; Notification of DEP**

Notification of any provision, including any restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town, or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Notification of a State of Water Supply Emergency declared by the Department shall be provided by furnishing a copy of the Notice to radio and television stations serving the area served by the public water system as soon as possible, but no later than 48 hours after the public water system receives notice of the Department's

declaration. Any restriction imposed under section 5 or in the Department declaration of emergency or Order shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be provided to the Massachusetts Department of Environmental Protection at the same time that notification is given.

### **Section 7 Termination of a State of Water Supply Conservation; Notice**

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Water Commissioners upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner as is required for notice of the Town's declaration of its State of Water Supply Conservation.

### **Section 8 State of Water Supply Emergency; Compliance with DEP Orders**

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the Department for the purpose of bringing about an end to the State of Water Supply Emergency. The notice prescribed by this section shall be in writing and shall be published once in a newspaper of general circulation within the town where it is to be effective. Such notice shall summarize the provisions of the Declaration of Water Supply Emergency and the requirements and conditions thereof. Notice as prescribed by this section shall be sufficient for enforcement of the requirements of such Declaration on and after the date following newspaper publication.

### **Section 9 Penalties**

The Town, through its Water Commissioner, water superintendent, building inspector or local police may enforce this by-law(ordinance) Any person violating this by-law(ordinance) shall be liable to the Town in the amount of \$ \_\_\_\_for the first violation and \$ \_\_\_\_for each subsequent. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with section 21D of chapter 40 of the general laws.

### **Section 10 Severability**

The invalidity of any portion or provision of this by-law shall not invalidate any other portion or provision thereof.

### **Section 11 Exemptions**

The water use restrictions adopted under this by-law shall not apply to the specific uses outlined below provided the user meets any applicable eligibility criteria. The Department suggests that municipalities develop a specific procedure for granting those exemptions. *(The Department suggests that exemptions may be appropriate for the following uses:)*

- a. Commercial agriculture;
- b. Water to sustain animal life;
- c. Swimming pools used as a primary means of exercise, therapy or rehabilitation located at a medical or rehabilitation facility;
- d. Commercial car or vehicle washing facilities;

(In granting exemptions, municipalities should assess whether the user being granted the exemption is using the water efficiently. The municipality may want to condition exemptions to include specific conservation measures. For example, the municipality may want to consult with the United States Department of Agriculture's Natural Resource Conservation Service, to confirm that agricultural users seeking exemptions are using the best management practices available or will commit to adopting such practices as soon as feasible.)

<sup>1</sup> The terms "town" and "by-law" used throughout this document are intended to also refer to cities and ordinances, respectively.

<sup>2</sup> References to Boards of Water Commissioners throughout this by-law should be edited by particular Cities and Towns to accurately describe the municipal department or board having responsibility for the operation and maintenance of the water supply system.